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SENATE BILL 1051

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Linda M Lopez

AN ACT

RELATING TO LICENSING; PROVIDING FOR POLYSOMNOGRAPHY AND A LIMITED EXEMPTION FROM LICENSURE REQUIREMENTS; AMENDING SECTIONS OF THE RESPIRATORY CARE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-12B-3 NMSA 1978 (being Laws 1984, Chapter 103, Section 3, as amended) is amended to read:

"61-12B-3. DEFINITIONS.--As used in the Respiratory Care Act:

A. "board" means the advisory board of respiratory care practitioners;

B. "department" means the regulation and licensing department or that division of the department designated to administer the provisions of the Respiratory Care Act;

C. "respiratory care" means a health care

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1 profession, under medical direction, employed in the therapy,
2 management, rehabilitation, diagnostic evaluation and care of
3 patients with deficiencies and abnormalities that affect the
4 cardiopulmonary system and associated aspects of other system
5 functions, and the terms "respiratory therapy" and "inhalation
6 therapy" where such terms mean respiratory care;

7 D. "practice of respiratory care" includes:

8 (1) direct and indirect cardiopulmonary care
9 services that are of comfort, safe, aseptic, preventative and
10 restorative to the patient;

11 (2) cardiopulmonary care services, including
12 the administration of pharmacological, diagnostic and
13 therapeutic agents related to cardiopulmonary care necessary to
14 implement treatment, disease prevention, cardiopulmonary
15 rehabilitation or a diagnostic regimen, including paramedical
16 therapy and baromedical therapy;

17 (3) specific diagnostic and testing techniques
18 employed in the medical management of patients to assist in
19 diagnosis, monitoring, treatment and research of
20 cardiopulmonary abnormalities, including pulmonary function
21 testing, hemodynamic and physiologic monitoring of cardiac
22 function and collection of arterial and venous blood for
23 analysis;

24 (4) observation, assessment and monitoring of
25 signs and symptoms, general behavior, general physical response

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1 to cardiopulmonary care treatment and diagnostic testing,
2 including determination of whether such signs, symptoms,
3 reactions, behavior or general response exhibit abnormal
4 characteristics;

5 (5) implementation based on observed
6 abnormalities, appropriate reporting, referral, respiratory
7 care protocols or changes in treatment, pursuant to a
8 prescription by a physician authorized to practice medicine or
9 other person authorized by law to prescribe, or the initiation
10 of emergency procedures or as otherwise permitted in the
11 Respiratory Care Act;

12 (6) establishing and maintaining the natural
13 airways, insertion and maintenance of artificial airways,
14 bronchopulmonary hygiene and cardiopulmonary resuscitation,
15 along with cardiac and ventilatory life support assessment and
16 evaluation; and

17 (7) the practice performed in a clinic,
18 hospital, skilled nursing facility, private dwelling or other
19 place deemed appropriate or necessary by the department;

20 E. "expanded practice" means the practice of
21 respiratory care by a respiratory care practitioner who has
22 been prepared through a formal training program to function
23 beyond the scope of practice of respiratory care as defined by
24 rule of the department;

25 F. "polysonnographic technician" means a person who

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1 has successfully completed a formal polysomnography training
2 program associated with a state-licensed or nationally
3 accredited educational facility or has successfully completed
4 of a minimum of four hundred eighty hours of experience as a
5 polysomnographic trainee with documented proficiency in
6 polysomnography-related respiratory care procedures and who has
7 a limited permit issued by the department;

8 G. "polysomnographic technologist" means a person
9 who has successfully completed the certification examination
10 administered by the board of registered polysomnographic
11 technologists and who has a limited license issued by the
12 department;

13 H. "polysomnographic trainee" means a person who
14 has provided written documentation that either a
15 polysomnographic technologist or a New Mexico licensed
16 physician will directly supervise that person's performance of
17 basic polysomnographic-related procedures and who has a limited
18 permit issued by the department. In this subsection, "directly
19 supervise" means the person supervising the trainee will be on
20 the premises where polysomnographic-related respiratory care is
21 being provided and shall be immediately available for
22 consultation with the trainee;

23 I. "polysomnography" means the process of
24 analyzing, monitoring and recording physiologic data during
25 sleep and wakefulness to assist in the assessment and diagnosis

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1 of sleep-wake disorders and other disorders, syndromes and
2 dysfunctions that are sleep-related, manifest during sleep or
3 that disrupt normal sleep-wake cycles and activities;

4 J. "polysomnography-related respiratory care
5 services" means the limited practice of respiratory care in the
6 provision of polysomnographic services, under the supervision
7 of a New Mexico licensed physician at a sleep disorders center
8 or laboratory, by a registered polysomnographic technologist or
9 polysomnographic technician who holds a limited license issued
10 by the department, or who is otherwise licensed by the
11 department as a respiratory care practitioner.

12 "Polysomnography-related respiratory care services" are limited
13 to the therapeutic and diagnostic use of oxygen, noninvasive
14 ventilatory assistance of patients who spontaneously breathe
15 when awake, the application and monitoring of pulse oximetry
16 and capnography and the education of patients about using and
17 complying with the preceding procedures, as ordered by a New
18 Mexico licensed physician or by written procedures and
19 protocols of the associated sleep disorders center or
20 laboratory as approved by a New Mexico licensed physician and
21 that do not violate regulations adopted by the department in
22 consultation with the board;

23 [F.] K. "respiratory care practitioner" means a
24 person who is licensed to practice respiratory care in New
25 Mexico;

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1 ~~[G-]~~ L. "respiratory care protocols" means a
2 predetermined, written medical care plan, which can include
3 standing orders;

4 ~~[H-]~~ M. "respiratory therapy training program"
5 means an education course of study as defined by rule of the
6 department; and

7 ~~[I-]~~ N. "superintendent" means the superintendent
8 of regulation and licensing. "

9 Section 2. Section 61-12B-4 NMSA 1978 (being Laws 1984,
10 Chapter 103, Section 4, as amended) is amended to read:

11 "61-12B-4. LICENSE REQUIRED--EXCEPTIONS. --

12 A. No person shall practice respiratory care or
13 represent himself to be a respiratory care practitioner unless
14 he is licensed pursuant to the provisions of the Respiratory
15 Care Act, except as otherwise provided by that act.

16 B. A respiratory care practitioner may transcribe
17 and implement the written or verbal orders of a physician or
18 other person authorized by law to prescribe pertaining to the
19 practice of respiratory care and respiratory care protocols.

20 C. Nothing in the Respiratory Care Act is intended
21 to limit, preclude or otherwise interfere with:

22 (1) the practices of other persons and health
23 providers licensed by appropriate agencies of New Mexico;

24 (2) self-care by a patient;

25 (3) gratuitous care by a friend or family

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1 member who does not represent or hold himself out to be a
2 respiratory care practitioner; or

3 (4) respiratory care services rendered in case
4 of an emergency.

5 D. An individual who has demonstrated competency in
6 one or more areas covered by the Respiratory Care Act may
7 perform those functions that he is qualified by examination to
8 perform; provided that the examining body or testing entity is
9 recognized nationally for expertise in evaluating the
10 competency of persons performing those functions covered by
11 that act or department rules. The department shall establish
12 by rule those certifying agencies and testing entities that are
13 acceptable to the department.

14 E. The Respiratory Care Act does not prohibit
15 qualified clinical laboratory personnel who work in facilities
16 licensed pursuant to the provisions of the federal Clinical
17 Laboratories Improvement Act of 1967, as amended, or accredited
18 by the college of American pathologists or the joint commission
19 on accreditation of healthcare organizations from performing
20 recognized functions and duties of medical laboratory personnel
21 for which they are appropriately trained and certified.

22 F. Only respiratory care practitioners,
23 polysomnographic technologists, polysomnographic technicians or
24 polysomnographic trainees may provide polysomnography-related
25 respiratory care services."

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1 Section 3. Section 61-12B-5 NMSA 1978 (being Laws 1984,
2 Chapter 103, Section 5, as amended) is amended to read:

3 "61-12B-5. ADVISORY BOARD CREATED. --

4 A. The superintendent shall appoint an "advisory
5 board of respiratory care practitioners" consisting of [~~five~~]
6 six members as follows:

7 (1) one physician licensed in New Mexico who
8 is knowledgeable in respiratory care;

9 (2) two respiratory care practitioners who are
10 residents of New Mexico, licensed by the department and in good
11 standing. At least one of the respiratory care practitioners
12 shall have been actively engaged in the practice of respiratory
13 care for at least five years immediately preceding appointment
14 or reappointment; [~~and~~]

15 (3) two public members who are residents of
16 New Mexico. A public member shall not have been licensed as a
17 respiratory care practitioner nor shall he have any financial
18 interest, direct or indirect, in the occupation to be
19 regulated; and

20 (4) one polysomnographic technologist
21 registered by the board of registered polysomnographic
22 technologists who holds a valid limited license issued by the
23 department that is in good standing, is a resident of New
24 Mexico and has been actively engaged in the practice of
25 polysomnography for at least the five-year period immediately

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1 preceding appointment or reappointment to the board.

2 B. The board shall be administratively attached to
3 the department.

4 C. A member shall serve no more than two
5 consecutive three-year terms.

6 D. A member of the board shall receive per diem and
7 mileage as provided for nonsalaried public officers in the Per
8 Diem and Mileage Act and shall receive no other compensation,
9 perquisite or allowance in connection with the discharge of his
10 duties as a board member.

11 E. A member failing to attend three consecutive
12 regular and properly noticed meetings of the board without a
13 reasonable excuse shall be automatically removed from the
14 board.

15 F. In the event of a vacancy, the board shall
16 immediately notify the superintendent of the vacancy. Within
17 ninety days of receiving notice of a vacancy, the
18 superintendent shall appoint a qualified person to fill the
19 remainder of the unexpired term.

20 G. A majority of the board members currently
21 serving constitutes a quorum of the board.

22 H. The board shall meet at least twice a year and
23 at such other times as it deems necessary.

24 I. The board shall annually elect officers as
25 deemed necessary to administer its duties."

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1 Section 4. Section 61-12B-6 NMSA 1978 (being Laws 1984,
2 Chapter 103, Section 6, as amended) is amended to read:

3 "61-12B-6. DEPARTMENT--DUTIES AND POWERS. --

4 A. The department, in consultation with the board,
5 shall:

6 (1) evaluate the qualifications of applicants
7 and review the required examination results of applicants. The
8 department may recognize the entry level examination written by
9 the national board for respiratory care or a successor board;

10 (2) promulgate rules as may be necessary to
11 implement the provisions of the Respiratory Care Act;

12 (3) issue and renew licenses and temporary
13 permits to qualified applicants who meet the requirements of
14 the Respiratory Care Act; and

15 (4) administer, coordinate and enforce the
16 provisions of the Respiratory Care Act and investigate persons
17 engaging in practices that may violate the provisions of that
18 act.

19 B. The department, in consultation with the board,
20 may:

21 (1) conduct examinations of respiratory care
22 practitioner applicants as required by rules of the department;

23 (2) reprimand, fine, deny, suspend or revoke a
24 license or temporary permit to practice respiratory care as
25 provided in the Respiratory Care Act in accordance with the

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1 provisions of the Uniform Licensing Act;

2 (3) for the purpose of investigating
3 complaints against applicants and licensees, issue
4 investigative subpoenas prior to the issuance of a notice of
5 contemplated action as set forth in the Uniform Licensing Act;

6 (4) enforce and administer the provisions of
7 the Impaired Health Care Provider Act and promulgate rules
8 pursuant to that act;

9 (5) promulgate rules or disciplinary
10 guidelines relating to impaired practitioners;

11 (6) promulgate rules to allow the interstate
12 transport of patients; ~~[and]~~

13 (7) promulgate rules to determine and regulate
14 the scope and qualifications for expanded practice for
15 ~~[respiratory care practitioners]~~ licensees or permittees; and

16 (8) promulgate rules to issue and renew
17 limited licenses to polysomnographic technologists and limited
18 permits to polysomnographic technicians and polysomnographic
19 trainees to provide polysomnography-related respiratory care
20 services. "

21 Section 5. Section 61-12B-7 NMSA 1978 (being Laws 1984,
22 Chapter 103, Section 7, as amended) is amended to read:

23 "61-12B-7. LICENSING BY TRAINING AND EXAMINATION. -- A
24 person desiring to become licensed as a respiratory care
25 practitioner or desiring to receive a limited license to

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1 provide polysomnography-related respiratory care services shall
2 make application to the department on a written form and in
3 such manner as the department prescribes, pay all required
4 application fees and certify and furnish evidence to the
5 department that the applicant:

6 A. has successfully completed a training program as
7 defined in the Respiratory Care Act and set forth by rules of
8 the department;

9 B. has passed an entry level examination [~~as~~
10 ~~specified by rules of the department~~] for respiratory care
11 practitioners administered by the national board for
12 respiratory care or [a] its successor board or an entry level
13 examination for polysomnographic technologists or
14 polysomnographic technicians administered by the board for
15 registered polysomnographic technologists or its successor
16 board;

17 C. is of good moral character; and

18 D. has successfully completed other training or
19 education programs and passed other examinations as set forth
20 by rules of the department."

21 Section 6. Section 61-12B-8 NMSA 1978 (being Laws 1984,
22 Chapter 103, Section 8, as amended) is amended to read:

23 "61-12B-8. LICENSING WITHOUT TRAINING AND EXAMINATION. --

24 A. The department shall waive the education and
25 examination requirements for an applicant for a respiratory

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1 care practitioner license who presents proof that [he] the
2 applicant is currently licensed in good standing in a
3 jurisdiction that has standards for licensure that are at least
4 equal to those for licensure in New Mexico as required by the
5 Respiratory Care Act.

6 B. The department shall waive the education and
7 examination requirements for an applicant for a limited license
8 to provide polysomnography-related respiratory care services
9 who presents proof that the applicant is currently licensed,
10 registered or holds a permit in good standing in a jurisdiction
11 that has standards for licensure, registration or permits that
12 are at least equal to those in New Mexico as required by the
13 Respiratory Care Act. "

14 Section 7. Section 61-12B-9 NMSA 1978 (being Laws 1984,
15 Chapter 103, Section 9, as amended) is amended to read:

16 "61-12B-9. OTHER LICENSING PROVISIONS. --

17 A. The department, in consultation with the board,
18 shall adopt rules for mandatory continuing education
19 requirements that shall be completed as a condition for renewal
20 of a license or permit issued pursuant to the provisions of the
21 Respiratory Care Act.

22 B. The department, in consultation with the board,
23 may adopt rules for issuance of temporary permits to students
24 and graduates of approved training programs to practice limited
25 respiratory care under the direct supervision of a licensed

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1 respiratory care practitioner or physician. Rules shall be
2 adopted defining the terms "student" and "direct supervision".

3 C. A license issued by the department shall
4 describe the licensed person as a "respiratory care
5 practitioner licensed by the New Mexico regulation and
6 licensing department".

7 D. Unless licensed as a respiratory care
8 practitioner pursuant to the provisions of the Respiratory Care
9 Act, no person shall use the title "respiratory care
10 practitioner", the abbreviation "R. C. P. " or any other title or
11 abbreviation to indicate that the person is a licensed
12 respiratory care practitioner.

13 E. A copy of a valid license, permit or temporary
14 permit to practice respiratory care or a limited license or
15 limited permit to practice polysomnography-related respiratory
16 care services issued pursuant to the Respiratory Care Act shall
17 be kept on file at the [~~respiratory care practitioner's or~~
18 ~~temporary~~] licensee or permittee's place of employment.

19 F. [~~A respiratory care practitioner license~~]
20 Licenses issued by the department shall expire on September 30,
21 annually or biennially, as provided by rules of the department.

22 G. Polysomnographic technologists who have been
23 issued a limited license by the department to perform
24 polysomnography-related respiratory care services pursuant to
25 the provisions of the Respiratory Care Act may use the title

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1 "licensed PSGT" or "licensed polysomnographic technologist" or
2 the abbreviation "LPSGT".

3 H. Polysomnographic technicians who have been
4 issued a limited permit by the department to perform
5 polysomnography-related respiratory care services pursuant to
6 the provisions of the Respiratory Care Act may use the title
7 "PSG technician permittee".

8 I. Polysomnographic trainees who have been issued a
9 limited permit by the department to perform polysomnography-
10 related respiratory care services pursuant to the provisions of
11 the Respiratory Care Act may use the title "PSG trainee
12 permittee". "

13 Section 8. Section 61-12B-11 NMSA 1978 (being Laws 1984,
14 Chapter 103, Section 11, as amended) is amended to read:

15 "61-12B-11. FEES. --

16 A. The superintendent, in consultation with the
17 board, shall by rule establish a schedule of reasonable fees
18 for licenses, [~~temporary~~] permits and renewal of licenses [~~for~~
19 ~~respiratory care practitioners~~] and permits.

20 B. The initial application fee shall be set in an
21 amount not to exceed one hundred fifty dollars (\$150).

22 C. [~~A license renewal fee~~] Renewal fees for
23 licenses and permits shall be established in an amount not to
24 exceed one hundred fifty dollars (\$150). "

25 Section 9. Section 61-12B-12 NMSA 1978 (being Laws 1984,
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1 Chapter 103, Section 12, as amended) is amended to read:

2 "61-12B-12. DENIAL, SUSPENSION, REVOCATION AND
3 REINSTATEMENT OF LICENSES AND PERMITS. --

4 A. The superintendent in consultation with the
5 board and in accordance with the rules set forth by the
6 department and the procedures set forth in the Uniform
7 Licensing Act may take disciplinary action against a license or
8 [~~temporary~~] permit held or applied for pursuant to the
9 Respiratory Care Act for the following causes:

10 (1) fraud or deceit in the procurement of or
11 attempt to procure a license or [~~temporary~~] permit;

12 (2) imposition of any disciplinary action for
13 an act that would be grounds for disciplinary action by the
14 department pursuant to the Respiratory Care Act or as set forth
15 by rules of the department upon a person by an agency of
16 another jurisdiction that regulates respiratory care;

17 (3) conviction of a crime that substantially
18 relates to the qualifications, functions or duties of a
19 respiratory care practitioner or the duties of a
20 polysomnographic technologist, polysomnographic technician or
21 polysomnographic trainee in the provision of polysomnography-
22 related respiratory care services. The record of conviction or
23 a certified copy thereof shall be conclusive evidence of the
24 conviction;

25 (4) impersonating or acting as a proxy for an

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1 applicant in an examination given pursuant to provisions of the
2 Respiratory Care Act;

3 (5) habitual or excessive use of intoxicants
4 or drugs;

5 (6) gross negligence as defined by rules of
6 the department in the practice of respiratory care or in the
7 provision of polysomnography-related respiratory care services;

8 (7) violating a provision of the Respiratory
9 Care Act or a rule duly adopted pursuant to that act or aiding
10 or abetting a person to violate a provision of or a rule
11 adopted pursuant to that act;

12 (8) engaging in unprofessional conduct as
13 defined by rules set forth by the department;

14 (9) committing a fraudulent, dishonest or
15 corrupt act that is substantially related to the
16 qualifications, functions or duties of a respiratory care
17 practitioner or of a polysomnographic technologist,
18 polysomnographic technician or polysomnographic trainee in the
19 provision of polysomnography-related respiratory care services;

20 (10) practicing respiratory care without a
21 valid license or temporary permit;

22 (11) aiding or abetting the practice of
23 respiratory care by a person who is not licensed or who has not
24 been issued a temporary permit by the department;

25 (12) conviction of a felony. The record of

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1 conviction or a certified copy thereof shall be conclusive
2 evidence of the conviction;

3 (13) violating a provision of the Controlled
4 Substances Act;

5 (14) failing to furnish the department or its
6 investigators or representatives with information requested by
7 the department in the course of an official investigation;

8 (15) practicing beyond the scope of
9 respiratory care as defined in the Respiratory Care Act or as
10 set forth by rules of the department; or

11 (16) surrendering a license, certificate or
12 permit to practice respiratory care or a license, certificate
13 or permit to provide polysomnography-related respiratory care
14 services in another jurisdiction while an investigation or
15 disciplinary proceeding is pending for an act or conduct that
16 would constitute grounds for disciplinary action under the
17 Respiratory Care Act.

18 B. The department, in consultation with the board,
19 may impose conditions on and promulgate rules relating to the
20 reapplication or reinstatement of applicants, licensees or
21 [temporary] permittees who have been subject to disciplinary
22 action by the department. "